



**Brotherhood of Maintenance of Way Employees**

*Affiliated with the A.F.L.-C.I.O. and C.L.C.*

August 19, 1999

The Docket Clerk  
U.S. DOT Dockets, Room PL-40 1  
400 Seventh Street, SW  
Washington, D.C., 20590-0001

RE: FHWA Docket No. FHWA-99-5880 - 4

DOT  
AUG 23 AM 11:45  
DEPT. OF TRANSPORTATION  
DOCKET SECTION

Dear Sir or Madam:

The Brotherhood of Maintenance of Way Employees (**BMWE**) submits the following comments to the above-referenced docket regarding Hulcher's Services, Inc. (Hulchers) application for exemption from 49 CFR Part 395.3, and the Federal Highway Administration's preliminary determination to deny the application. BMWE is a railroad labor union representing approximately 50,000 employees who build, maintain, inspect, and repair the railroad tracks and bridges of all Class I Railroads, and a number of Class II and III Railroads, in the United States and Canada.

BMWE opposes the granting of this exemption to Hulchers and we support **FHWA's preliminary** decision to deny Hulcher's application for exemption from 49 CFR Part 395.3. BMWE further encourages FHWA to issue a final decision denying the application for exemption from the maximum driving time limitations of the Federal Motor Carrier Safety Regulations (**FMCSRs**).

Railroad construction and maintenance personnel represented by BMWE work side by side with Hulcher employees on virtually every train derailment or railroad accident where Hulchers Services, Inc., is contracted by a railroad. Hulchers Services, Inc. is routinely contracted by **railroad** companies to truck in and operate specialized heavy equipment to clear damaged rail cars and locomotives in railroad accidents. Typically, BMWE represented employees are simultaneously tasked with rebuilding and repairing the railroad track and related infrastructure as Hulchers clears away the accident debris. During "emergency" cleanup operations, It in not unusual for BMWE and Hulcher employees to work consecutive double or triple shifts under often harsh physical and environmental conditions, without rest, until railroad

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service is restored. Clearly, an exemption from the maximum driving time limitations of 49 **CFR** Part 395.3 for Hulcher employees who routinely work under these extreme conditions is not in the interest of public or worker safety, and should be denied by FHWA .


Hulcher's argument that regulatory relief is necessary to respond to railroad disasters and emergencies is also unfounded. Most of the so-called "emergencies" that Hulchers is contracted to respond to are not emergencies as defined in 49 CFR Part 390.5, but rather, they are simply emergencies to a railroad corporation which may be temporarily unable to move trains through a railroad accident site.

Also, in view of Hulcher's statement that its average movement of equipment and personnel is less than 200 miles, Hulcher's ability to respond to emergencies would seemingly be unaffected by **FHWA's** denial of the application. The ability to respond quickly and efficiently to railroad emergencies within the driving time limitations specified in 49 CFR Part 395.3 does not seem to be a legitimate concern here. FMCSR hours of service limitations would more likely come into play subsequent to Hulcher employees' cessation of work as laborers and heavy equipment operators and upon assumption of commercial motor vehicle (**CMV**) driver duties to haul trucks and equipment back to its staged location.

The FMCSRs currently regulate conditions to prevent **CMV** driver fatigue and to assure that drivers are well rested, alert, and fit to be behind the wheel of a commercial motor vehicle. Hulchers is requesting an exemption for their drivers, most of whom are working as laborers and heavy equipment operators during non-driving time, from the mandatory hours of service limitations and rest time requirements of the FMCSRs. **BMW** believes that the granting of this exemption would be contrary to the purpose and intent of the FMCSRs and would not be in the best interest of motor carrier and public safety.

For all the reasons stated above, and in the interest of public highway safety, **BMW** opposes the granting of an exemption to Hulchers Services, Inc., in **FHWA** Docket No. **FHWA-99-5880** and we support the **FHWA's** intent to deny the exemption.

Respectfully submitted,

  
President